

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM E. POWELL,

Plaintiff,

v.

Case No. 2:15-cv-11616
District Judge Paul D. Borman
Magistrate Judge Anthony P. Patti

INTERNAL REVENUE
SERVICE,

Defendant.

**ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION TO AMEND
COMPLAINT (DE 12) AND DEEMING PLAINTIFF'S PROPOSED
AMENDED COMPLAINT (DE 12-1) AS THE OPERATIVE PLEADING**

I. BACKGROUND

Plaintiff filed his complaint and application to proceed *in forma pauperis* on May 5, 2015, seeking to compel Defendant to comply with his requests for certain tax documents under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. (DE 1 and 2.) His application was granted on May 11, 2015 and the U.S. Marshals issued a summons for Defendant one day later. (DE 9.) On July 6, 2015, Plaintiff filed a motion for leave to amend his complaint. (DE 12.) The motion was referred to me pursuant to 28 U.S.C. § 636(b)(1)(a) on August 19, 2015. (DE 13.)

In his motion, Plaintiff asks the Court to allow him to amend his complaint to include a June 8, 2015 FOIA request that he claims has "only recently [been]

deemed exhausted.” (DE 12 at ¶ 8.) Plaintiff represents that Defendant was served with the original complaint on May 18, 2015. As of September 3, 2015, however, the Court’s docket did not reflect that Defendant had been served.

II. STANDARD

Pursuant to Federal Rule of Civil Procedure 15, a party may amend its pleadings once as a matter of course 21 days after service, or if the pleading is one to which a responsive filing is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. Fed. R. Civ. P. 15(a)(1). Otherwise, a party must move the court or receive the opposing party’s consent to amend a complaint. Fed. R. Civ. P. 15(a)(2). Leave to amend must be freely given when justice so requires. *Id.*

III. ANALYSIS

This matter came before me for a hearing, along with the pending motion to compel in case number 2:15-cv-11033, *Powell v. Internal Revenue Service*, on September 3, 2015. During the hearing, Joseph E. Hunsader appeared on behalf of Defendant, accepted service of Plaintiff’s first amended complaint, and informed the Court that Defendant does not oppose Plaintiff’s motion to amend.

Accordingly, Plaintiff’s unopposed motion to amend is **GRANTED**. The Court will consider Plaintiff’s proposed first amended complaint, attached as Exhibit A

to his motion (DE 12-1), as **FILED**. Plaintiff's first amended complaint will hereafter be considered the operative pleading in this matter.

Because the date of service of Plaintiff's original and/or amended complaint is unclear, the Court provided Defendant with 21 days from the date of the hearing in which to file an answer or otherwise respond to Plaintiff's first amended complaint. Defendant's answer is therefore due **ON OR BEFORE SEPTEMBER 24, 2015**.

IT IS SO ORDERED.

Dated: September 8, 2015

s/Anthony P. Patti
Anthony P. Patti
UNITED STATES MAGISTRATE JUDGE

I hereby certify that a copy of the foregoing document was sent to parties of record on September 8, 2015, electronically and/or by U.S. Mail.

s/Michael Williams
Case Manager for the
Honorable Anthony P. Patti